

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 469 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAGANBHAI SOMABHA MAKWANA

Versus

POLICE COMMISSIONER

Appearance:

MR MOHSIN M PETIWALA for Petitioner
MR KAMAL MEHTA ADDL. GOVERNMENT PLEADER
for Respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 03/04/98

ORAL JUDGEMENT

By this application, under Art. 226 of the Constitution of India, the petitioner calls in question the legality and validity of the detention order dt. 2nd September, 1997 passed by the Police Commissioner for the City of Ahmedabad, invoking his powers under Sec.3 of the Gujarat Prevention of Anti-Social Activities Act (for short the 'Act'), pursuant to which, at present, he is

kept under detention.

2. The Commissioner of Police for the City of Ahmedabad was apprised of the fact that the petitioner, by carrying out his criminal activities, was disturbing the public order. He was terrorising the people and making them to bend his way. Those who resisted, were brutally beaten or dealt with and had to face dire consequences. The Police Commissioner then thought it fit to have stern action in the matter so that people may feel free. He then examined several records of the Police Stations and found that about 10 complaints were lodged against the present petitioner. All those complaints were with regard to the offences of trespass and theft punishable under Secs. 457- 380- 454 read with Sec.114 of Indian Penal Code. The complaints were lodged with different Police Stations namely Vatva Police Station, Baroda City J.P.Road Police Station and Aslali Police Station. Perusing the records of these complaints, the Police Commissioner was then satisfied that the petitioner was the dangerous person and his nefarious activities were the challenge to the maintenance of public order. Often the petitioner was extorting money, using the force and if necessary, using different weapons, he was keeping. He was often committing the offences of theft and was looting the people. Whoever resisted him, he used to run amok and cause injury, or put the people in instant fear of death or injury. The people were, therefore, feeling insecure. No one was willing to come forward and file the complaint and give statement against him, because of insecurity and possible danger to his safety. In some of the cases referred to hereinabove, the petitioner prayed for bail. His bail applications were granted. The possibility of his preferring the bail applications in rest of the matters could not be denied. The Police Commissioner also found that the petitioner, if succeeded in getting the bail, in those cases, he would again, as visualized by the Police Commissioner, indulge in subversive and nefarious activities, which would be the challenge to the maintenance of public order. He, therefore, found that the stern action in the eye of law was required to be taken, but after cogitation, he also found that any action, if taken, under general law sounding dull, would be a futile exercise and would yield no result. He, therefore, thought it fit to pass the impugned order, & get the petitioner arrested. Consequently, the order came to be passed, and at present, the petitioner is kept under detention. It is against that order, the present application has been filed.

3. On several grounds, the order in question has been assailed. At the time of hearing, after I put query, both the learned advocates tapered off their submissions, confining to the only ground namely likelihood of the petitioner to get the bail and thereafter the possibility of petitioner's indulging in his nefarious activities. As submitted by the petitioner's learned advocate, the order was passed merely under apprehension that if the petitioner would be released on bail, in all the cases, he would indulge in several nefarious activities which would be the challenge to the maintenance of the public order, and therefore, the order can well be termed bad in the eye of law. He then drew my attention to the relevant portion of the order in question. Reading that portion, it appears that the Police Commissioner was mainly guided by the fact that the petitioner was likely to be released on bail, soon after his preferring the application for bail in the competent courts, and if he succeeded in obtaining the bail, he would again indulge in his barbarous & woeful activities. With the result, the people would again feel insecured and several problems of public order would arise. When this is the only point which has compelled the Police Commissioner to pass the impugned order, whether the same can be said to be the just & sufficient ground to pass the order in question is the question that arises for examination.

4. A similar question arose before the Apex Court in the case of Ramesh Yadav vs. District Magistrate Etah and others, AIR 1986 SC 315, wherein it is held that if the detention order is passed, because the authority passing the order is apprehensive of the fact that the detenu will, if released on bail by the court, would again carry out his criminal & baneful activities in his area, the same in no case, be justified. If the apprehension of the detaining authority is true, the bail application has to be opposed, and in case the bail is granted, the challenge against that order in the higher forum has to be raised. Merely on the ground that the accused in custody as an undertrial prisoner, is likely to get the bail, order of detention under the Act should not ordinarily be passed. In view of such decision, the impugned order passed, under the apprehension that the petitioner is likely to get the bail and thereafter, likely to indulge in criminal activities is required to be set aside.

5. For the aforesaid reason, this application is allowed. The order of detention dt. 2nd September, 1997

passed by the Police Commissioner for the City of Ahmedabad is set aside and quashed. The petitioner is hereby ordered to be set at liberty forth with, if no longer required in any other case. Rule accordingly made absolute. Direct Service is permitted.

(ccs)